Supreme Court, U.S.
FILED
APR 1 - 2008
OFFICE OF THE CLERK

89

No. (1) 071254

In The
# Supreme Court of the United States

GLENN F. STRAUB,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## PETITION FOR WRIT OF CERTIORARI

JAY A. GAYOSO
*Counsel of Record*
JAY A. GAYOSO, P.A.
Aventura Corporate Center
20801 Biscayne Boulevard,
Suite 506
Aventura, Florida 33180
(305) 936-8844

*Counsel for Glenn F. Straub*

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

## QUESTION PRESENTED

Whether a conviction for indirect criminal contempt can be maintained under 18 U.S.C. § 401(3) when the district court lacked subject matter jurisdiction and the order was not necessary to maintain the status quo while the district court considered whether it had jurisdiction.

TABLE OF CONTENTS

Page

QUESTION PRESENTED ..... i

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iii

PETITION FOR A WRIT OF CERTIORARI ..... 1

OPINIONS BELOW ..... 1

JURISDICTION ..... 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... 2

STATEMENT OF THE CASE ..... 2

REASONS FOR GRANTING THE PETITION ..... 5

I. THE DECISION BELOW CONFLICTS WITH PRIOR DECISIONS BY THIS COURT REGARDING CRIMINAL CONTEMPT CONVICTIONS ENTERED WHERE THE DISTRICT COURT LACKS SUBJECT MATTER JURISDICTION ..... 5

CONCLUSION ..... 12

APPENDIX

Nov. 29, 2007 Opinion of the Court of Appeals for the Eleventh Circuit ..... App. 1

Jul. 24, 2006 Order Affirming United States Magistrate Judge's Order ..... App. 17

Jan. 3, 2008 Eleventh Circuit Order Denying Petition for Rehearing ..... App. 30

# TABLE OF AUTHORITIES

Page

CASES

*Ex parte Fiske*, 113 U.S. 713 (1885) ..... 11

*Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418 (1911) ..... 9

*In re Green*, 369 U.S. 689 (1962) ..... 11

*R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943 (4th Cir. 1999) ..... 8

*United States v. Mine Workers*, 330 U.S. 258 (1947) ..... 6, 7, 9

*United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72 (1988) ..... 6

*United States v. Shipp*, 203 U.S. 563 (1906) ..... 7

*Willy v. Coastal Corp.*, 503 U.S. 131 (1992) ..... 6, 10

*Willy v. Coastal Corp.*, 915 F.2d 965 (5th Cir. 1990) ..... 10

CONSTITUTION

U.S. Const. art. III, § 2 ..... 2

STATUTE

18 U.S.C. § 401(3) ..... 2, 5, 6

RULES

Rule 42(a)(1), Fed.R.Crim.P. ..... 4

SUP. CT. R. 10 ..... 5

## PETITION FOR A WRIT OF CERTIORARI

Glenn F. Straub ("Straub") respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

## OPINIONS BELOW

The opinion of the Court of Appeals below is published and is listed as *United States of America v. Glenn F. Straub,* No. 06-14354-FF. (App. at A1-16). The opinion of the district court below is unpublished and is listed as *United States of America v. Glenn F. Straub,* No. 03-60237-CR-JIC, July 24, 2006. (*Id.*, at A17-29).

## JURISDICTION

The Court of Appeals below entered its judgment on November 29, 2007. A timely motion for rehearing pursuant to Fed.R.App.P. 40 was filed on December 20, 2007. The motion was denied by the Court of Appeals below on January 3, 2008. (*Id.* at A17). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provision at issue in this case is U.S. Const. art. III, § 2. The statutory provision at issue in this case is 18 U.S.C. § 401(3).

## STATEMENT OF THE CASE

### A. Statement of the Facts

Straub was convicted of indirect criminal contempt for violating a court order prohibiting him from being at his place of business while a partially completed hull for a vessel was being removed by its owner, Seagrove Trading, Inc. (App. 2). Straub was president of Broward Yachts, which provided storage for the unfinished hull (the "Hull"). (*Id.*). Broward Yachts commenced litigation in the district court seeking wharfage and storage costs. (*Id.*). Broward Yachts maintained that the district court had admiralty jurisdiction because Broward Yachts was asserting a lien for docking and storing the Hull, but Seagrove challenged admiralty jurisdiction on the basis that the Hull was not a vessel. (*Id.*).

While the district court contemplated whether it had jurisdiction in the case, it ordered that the Hull be substituted with a bond. (App. 3). When the parties could not agree on the terms of removing the Hull, the district court conducted a series of hearings and issued orders in an effort to facilitate Seagrove Trading's efforts to remove the Hull from the Broward

Yachts shed. (App. 3-4). Ultimately, the removal required use of a Travelift – a large, wheeled vehicle that transports yachts and was operated by a third-party, Mega Marine. (*Id.*). On April 15, 2003, a month after the district court held the hearing to determine if it had jurisdiction, it entered an order setting forth a procedure for removing the Hull:

> **ORDERED that Broward shall make the Travelift available to Seagrove's Contractors, at such time as they can again be mobilized, for use in moving Hull No. 4 from Broward's shed into the water.** Seagrove may also use cranes, trucks or other equipment necessary to assist in the removal of the hull, engines, and any of its other property still located on Broward's premises, and Broward shall provide Seagrove's Contractors full access to its premises, including the launching facilities, for such purposes. Upon placement of Hull No. 4 in the water, Seagrove will be responsible for towing Hull No. 4 to another location of its choosing. Seagrove will provide Mega Marine and Broward twenty four hours' written notice of its intent to use the Travelift.
>
> IT IS FURTHER ORDERED that the United States Marshal is hereby directed to use such force as may be necessary to ensure that Seagrove's Contractors have the unobstructed use of the Travelift and have unobstructed access to Broward's premises and the launching facilities as ordered herein until Hull No. 4, the engines, and Seagrove's

> other property are removed from Broward's premises, and to present any party, third party, or other person or entity from interfering with or otherwise obstructing or preventing the move from taking place when Seagrove's Contractors are mobilized.
>
> . . . .
>
> IT IS FURTHER ORDERED that Mr. Glenn Straub shall not interfere in any manner with the removal of Hull No. 4 and Seagrove's other property, and shall not be present on Broward's premises during removal.

(*Id.*). (emphasis added).

On April 18, 2003, Straub was arrested after he arrived at the Broward Yachts facility after the Hull had been removed and placed in the water adjacent to the facility. (App. 4).

Straub asserted to the U.S. Marshals that he was not on the Broward Yachts' premises but instead was on property near the facility. (App. 5).

### B. Proceedings Below

On June 3, 2004, a bench trial was conducted before a Magistrate Judge pursuant to Rule 42(a)(1), Fed.R.Crim.P. The Magistrate Judge ruled on June 22, 2004 that Straub was guilty of indirect criminal contempt. (App. 17).

The criminal contempt conviction was appealed to the district court, which upheld the conviction on July 24, 2006. (*Id.*).

The district court's determination was appealed to the Eleventh Circuit Court of Appeals, which entered a published opinion on November 29, 2007 affirming the district court's determination. (App. 1).

## REASONS FOR GRANTING THE PETITION

Straub recognizes that the Supreme Court is not primarily an error correcting Court. The decision at issue here, however, is in conflict with relevant decisions of this Court regarding the important federal question of whether a federal court may hold a third-party to a litigation in criminal contempt when the federal court has no jurisdiction over the underlying controversy. SUP. CT. R. 10.

### I. THE DECISION BELOW CONFLICTS WITH PRIOR DECISIONS BY THIS COURT REGARDING CRIMINAL CONTEMPT CONVICTIONS ENTERED WHERE THE DISTRICT COURT LACKS SUBJECT MATTER JURISDICTION.

In order to support a conviction of indirect criminal contempt under 18 U.S.C. § 401(3), the Government must prove that the court entered a lawful order of reasonable specificity, that the order was violated and the violation was willful. 18 U.S.C.

§ 401(3). The Eleventh Circuit concludes that even in the absence of subject matter jurisdiction over the case, the district court could maintain jurisdiction over Straub's contempt conviction because the order that was violated "was otherwise within [the district court's] authority." (App. 2, 10).

Straub disagrees that the district court had authority to order him away from his business location while Broward Yachts' property was used to help the owners of the Hull to remove the Hull from the Broward Yachts facility. Straub bases his position on the case law cited by the Eleventh Circuit as well as other Supreme Court cases. In its broadest sense, the Eleventh Circuit has ruled that all criminal contempt determinations can be maintained even if the district court does not have jurisdiction. This is an incorrect expansion of this Court's precedent on this issue.

This Court has held that a criminal conviction is not void because of a subsequent finding that a district court lacked jurisdiction over the subject matter of a controversy when the order that is violated is necessary for a district court to maintain the status quo while it is determining if it has jurisdiction. *United States v. Mine Workers*, 330 U.S. 258, 293-95 (1947), cited by *Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992) and *United States Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 78 (1988). This Court reasoned that a district court has the inherent authority to maintain the status quo while it takes the time necessary to determine if it has jurisdiction. *Id.*

This Court in *Mine Workers* cited *United States v. Shipp*, 203 U.S. 563 (1906). In that case this Court had allowed an appeal from a denial of a writ of habeas corpus by the Circuit Court of Tennessee. The petition had been filed by Johnson, who was jailed under a sentence of death imposed by a state court. Pending the appeal, this Court issued an order staying all proceedings against Johnson. However, the prisoner was taken from jail and lynched. Shipp, the sheriff having custody of Johnson, was charged with conspiring with others for the purpose of lynching Johnson, with intent to show contempt for the order of this Court. Shipp denied the jurisdiction of this Court to punish for contempt on the ground that the stay order was issued pending an appeal over which this Court had no jurisdiction because the constitutional questions alleged were frivolous and only a pretense. This Court rejected Shipp's arguments on the grounds that its stay order was necessary to maintain the status quo while it determined if it had jurisdiction over Johnson's appeal. *Id.* at 573.

*Shipp* and *Mine Workers* certainly does not stand for the proposition that all criminal convictions must be upheld when someone fails to obey an order of a court that has no jurisdiction. Instead, this Court couched its ruling in an analysis of whether a district court's ruling was necessary to maintain the status quo while it was determining jurisdiction. The case at bar differs from *Mine Workers* and *Shipp* because the district court order in this case was not necessary to

maintain the status quo while the district court determined if it had jurisdiction.

The Eleventh Circuit completely avoids the status-quo analysis, but instead simply states that the order Straub violated was "within the authority of the court." (App. 10). That position is error for two reasons. First, Straub did not violate any order that impeded the district court's efforts to determine if it had jurisdiction. To the contrary, Straub fully participated in the Court's proceedings to determine jurisdiction. Second, Straub's contempt ruling involves an order that clearly was outside the district court's authority.

The question presented in the underlying case was whether a partially completed hull that had been floated temporarily in a river was a vessel for purposes of invoking admiralty jurisdiction. Broward Yachts brought this case because the Hull effectively had been abandoned at its facility and it was seeking reimbursement for storage and necessaries for the Hull. As the Eleventh Circuit noted, the Hull was replaced with a bond early in the proceeding, and, at that point, the status quo had been maintained. *See R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943, 952 (4th Cir. 1999).

The problems in this case occurred when the Hull owners requested that the district court assist them in removing the Hull from the Broward Yachts facility. At that point, all matters regarding the removal of the Hull were collateral to the question of whether

the district court had jurisdiction, but clearly went to the merits of the case because Broward Yachts had maintained possession over the Hull prior to attempting to invoke the district court's admiralty jurisdiction. Stated differently, prior to the filing of the lawsuit, the status quo involved the Hull languishing at Broward Yachts' facility. The question vis a vis the parties was whether Broward Yachts could make a claim of lien against the Hull or recover from its owner. Accordingly, removing the Hull from the Broward Yachts facility was not necessary to place the parties back to the status quo before this lawsuit was filed.

Ultimately, the removal of the Hull from the Broward Yachts shed came down to using a Travelift. The district court ordered Mega Marine to surrender the Travelift to the subcontractors for the Vessel owners. There certainly is no authority supporting a district court from effectively taking property (the Travelift) and giving it to another party (Seagrove) while the district court decides if it even has jurisdiction.

The district court certainly did not have authority, while it was determining its own jurisdiction, to enter orders that effectively closed down the Broward Yachts' business for half a day, kept Straub away from his business, and allowed the Hull owners to use Broward Yachts' property. Quite unlike *Mine Workers* and *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 441-42 (1911) – which were cited by the Eleventh Circuit – the orders in this case were not tailored to

maintain the status quo while the district court determined if it had jurisdiction.

The Eleventh Circuit leans heavily on *Willy v. Coastal Corp.* for the proposition that Straub's conviction should survive a lack of jurisdiction because this Court has determined that Rule 11 sanctions are appropriate even if a court lacks subject matter jurisdiction. *Willy* involved a case that was removed to federal court by a defendant. *Willy*, 503 U.S. at 131. The plaintiff in *Willy*, who had been notified of his transgressions, filed misleading and ill-founded pleadings including a 110-page motion for summary judgment with numerous immaterial and unorganized documents. *Willy v. Coastal Corp.*, 915 F.2d 965, 966 (5th Cir. 1990). The plaintiff received Rule 11 sanctions and this Court upheld the sanctions because the sanctions did not require a ruling on the merits. *Id.*

*Willy* is distinguishable on two grounds. First, Straub did not violate any rules of procedure and was not even a party to the case. Rather, his alleged violation amounted to engaging in his constitutional right to appear at his place of business, which occurred hours after the Hull was supposed to be removed. Second, the district court's ruling in this case was effectively a ruling on the merits. The effect of the district court's orders was to give the Hull owners all the relief they could have asked for on the merits of the case, *i.e.*, possession of the Hull and the extinguishment of a possessory lien, while the court was still unsure of whether it had jurisdiction.

It is without question that the district court had no authority to assist in the removal of the Hull because it required the district court to take actions that were beyond determining whether it had jurisdiction over the matter. Stated a different way, the district court's authority transferred from the Hull to the bond while it decided whether it had jurisdiction over the case. Any further action with respect to the Hull that would involve more than maintaining the status quo would require the district court to have jurisdiction over the controversy.

This case is more in line with decisions by this Court in which it did not uphold contempt convictions when a district court entered an order without authority. *See In re Green*, 369 U.S. 689 (1962) and *Ex parte Fiske*, 113 U.S. 713 (1885). The Eleventh Circuit's efforts to distinguish *In re Green* and *Ex parte Fiske* rests squarely on the incorrect premise that the district court had authority to order the removal of the Hull and to order Straub not to appear indefinitely at his place of business while the Hull was being removed. Here, there was no such authority. Accordingly, this Court should grant this Petition for Writ of Certiorari because the Eleventh Circuit's opinion conflicts with prior decisions by this Court in which it has ruled that a district court's order is invalid when it does not have jurisdiction and the order is not necessary to maintain the status quo while the district court contemplates whether it has jurisdiction.

## CONCLUSION

For the reasons discussed above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted on behalf of Broward Yachts this 1st day of April 2008.

Respectfully submitted,

JAY A. GAYOSO, P.A.
JAY A. GAYOSO

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

---

No. 06-14354

---

D. C. Docket No. 03-60237-CR-JIC

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GLENN F. STRAUB,

Defendant-Appellant.

---

Appeal from the United States District Court
for the Southern District of Florida

---

(Filed Nov. 29, 2007)

Before ANDERSON and PRYOR, Circuit Judges, and VINING,* District Judge.

PRYOR, Circuit Judge:

---

* Honorable Robert L. Vining, Jr., United States District Judge for the Northern District of Georgia, sitting by designation.

Glenn Straub appeals his conviction of criminal contempt for violating a court order that prohibited his presence on the premises of Broward Yachts while an unfinished hull that belonged to Seagrove Trading, Inc., was removed from the premises. *See* 18 U.S.C. § 401(3). Straub argues that the evidence adduced at trial was insufficient to support his conviction because the order was not lawful and reasonably specific and any violation of the order was not willful. Before reaching the merits, we conclude that the district court had jurisdiction over the charge of criminal contempt even though the court that issued the order lacked maritime jurisdiction over the underlying controversy about the unfinished hull. We reject Straub's arguments on the merits, because the evidence that he refused to leave the premises after a deputy marshal read to Straub the relevant portion of the order was sufficient to support his conviction. We affirm.

## I. BACKGROUND

Glenn Straub was the president of Broward Yachts, Inc., which provided dockage, storage, and haul-out services for a partially completed yacht known as Destiny Hull that was owned by Seagrove Trading, Inc. Broward Yachts filed an *in rem* action against the hull to recover unpaid fees. On June 23, 2003, the district court dismissed the action for lack of subject matter jurisdiction because the unfinished hull did not qualify as a vessel for the purpose of invoking maritime jurisdiction, and we affirmed.

*Broward Yachts v. Vessel Known as Destiny Hull,* 107 Fed. Appx. 183 (11th Cir. 2004) (unpublished table decision).

On March 6, 2003, before the district court dismissed the suit, the court issued a warrant for the arrest of the hull. On March 19, 2003, the district court ordered the release of the hull in return for a bond posted by Seagrove. Because the parties could not agree on the terms and logistics of the transfer, the district court issued a series of orders clarifying the obligations of the parties. On April 15, 2003, the district court issued an order that outlined the procedure for the transfer and prohibited Straub's presence on the premises during the removal:

> Accordingly, it is hereby
>
> ORDERED that Broward shall make the Travelift available to Seagrove's Contractors, at such time as they can again be mobilized, for use in moving Hull No. 4 from Broward's shed into the water. Seagrove may also use cranes, trucks or other equipment necessary to assist in the removal of the hull, engines, and any of its other property still located on Broward's premises, and Broward shall provide Seagrove's Contractors full access to its premises, including the launching facilities, for such purposes. Upon placement of Hull No. 4 in the water, Seagrove will be responsible for towing Hull No. 4 to another location of its choosing. Seagrove will provide Mega Marine and Broward twenty four

> hours' written notice of its intent to use the Travelift.
>
> IT IS FURTHER ORDERED that the United States Marshal is hereby directed to use such force as may be necessary to ensure that Seagrove's Contractors have the unobstructed use of the Travelift and have unobstructed access to Broward's premises and the launching facilities as ordered herein until Hull No. 4, the engines, and Seagrove's other property are removed from Broward's premises, and to prevent any party, third party, or other person or entity from interfering with, or otherwise obstructing or preventing the move from taking place when Seagrove's Contractors are mobilized.
>
> . . . .
>
> IT IS FURTHER ORDERED that Mr. Glenn Straub shall not interfere in any manner with the removal of Hull No. 4 and Seagrove's other property, and shall not be present on Broward's premises during the removal.

The hull was removed from Broward's property on April 18, 2003. While the hull was in the water secured to a slip, Straub arrived at the facility. Deputy United States Marshal Jerome Retto read to Straub the relevant portions of the order that prohibited Straub's presence on the premises. Retto told Straub that he would be held in contempt if he remained on the property and that, if he was arrested, he could not bring personal property with him.

Straub then entered the Broward Yachts building to leave his personal effects. When Straub returned, Retto told Straub that he could avoid arrest if he waited in the parking lot. Straub refused to leave and was arrested.

After a bench trial before a magistrate judge, Straub was convicted of criminal contempt. Straub appealed the judgment to the district court, and the district court affirmed. The district court concluded that (1) Straub had failed to preserve for appeal his arguments about (a) the lawfulness of the underlying order and the applicability of the collateral bar rule and (b) the specificity of the term "premises"; (2) the order was reasonably specific; and (3) Straub violated the order willfully.

## II. STANDARDS OF REVIEW

To review the sufficiency of the evidence that supports an order of criminal contempt, we determine whether the evidence, construed in the light most favorable to the government, permits a finding of guilt beyond a reasonable doubt. *United States v. Bernardine,* 237 F.3d 1279, 1281-82 (11th Cir. 2001). When the defendant does not preserve an argument for appeal, we review for plain error, *United States v. Lewis,* 492 F.3d 1219, 1221-22 (11th Cir. 2007), which requires the petitioner to establish (1) that there was error; (2) that was plain; (3) that affected his substantial rights; and (4) that seriously affected the fairness, integrity, or public reputation of the

judicial proceeding. *Brough v. Imperial Sterling Ltd.*, 297 F.3d 1172, 1180 (11th Cir. 2002) (citing *United States v. Humphrey,* 164 F.3d 585, 588 n.3 (11th Cir. 1999)). An error is plain if it is "clear" or "obvious." *United States v. Olano,* 507 U.S. 725, 734, 113 S. Ct. 1770, 1777 (1993).

## III. DISCUSSION

Our discussion is divided in two parts. First, we consider *sua sponte* whether the district court had jurisdiction over the charge of criminal contempt even though the court that issued the order lacked subject matter jurisdiction over the underlying controversy. We hold that the district court had jurisdiction over the charge of criminal contempt. Second, we consider Straub's argument that the evidence was insufficient to support his conviction because the government did not establish that the order was lawful and reasonably specific and that he willfully violated the order. We conclude that Straub's arguments fail, and we affirm.

### *A. The District Court Had Jurisdiction over the Charge of Criminal Contempt.*

Before we consider the merits of the appeal, we address *sua sponte* whether the district court had subject matter jurisdiction over a charge of criminal contempt based on the violation of an order issued by a court that lacked subject matter jurisdiction over the underlying controversy. *See Eagerton v.*

*Valuations, Inc.*, 698 F.2d 1115, 1118 (11th Cir. 1983). At our request, the parties addressed this issue in their oral arguments. We conclude that, notwithstanding the ultimate dismissal of the underlying controversy for lack of subject matter jurisdiction, the district court had jurisdiction over the charge of criminal contempt.

The Supreme Court has held that a district court may impose sanctions, under Federal Rule of Civil Procedure 11, for conduct that occurred during a proceeding in which the court lacked subject matter jurisdiction, *Willy v. Coastal Corp.*, 503 U.S. 131, 112 S. Ct. 1076 (1992), and the two-fold reasoning of that decision is instructive. First, the *Willy* Court explained that, because the imposition of Rule 11 sanctions did not require an assessment of the legal merits of the complaint, the district court did not adjudicate a controversy over which it lacked jurisdiction when it imposed the sanctions. *Id.* at 138, 112 S. Ct. at 1080-81. Second, the Court distinguished Rule 11 sanctions from civil contempt, which requires subject matter jurisdiction over the underlying controversy. *Id.* at 138-39, 112 S. Ct. at 1081; *see also U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 76-80, 108 S. Ct. 2268, 2270-73 (1988). Civil contempt is remedial and aims to force compliance with an order of the court. *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 441-42, 31 S. Ct. 492, 498 (1911). The punishment for civil contempt continues until the contemnor chooses to comply with the order. *Id.* at 442, 31 S. Ct. at 498.

Rule 11 sanctions, in contrast, are punitive. *Willy*, 503 U.S. at 139, 112 S. Ct. at 1081. Their purpose is to punish a party who has already violated the rules of the court. *Id.*

The difference in purpose between a sanction for civil contempt and a punitive sanction under Rule 11 determines whether the absence of subject matter jurisdiction in the underlying proceeding affects the validity of the sanction. The interest of the court in levying sanctions for civil contempt disappears if the court lacks subject matter jurisdiction, because the purpose of civil contempt is to force compliance with an order. *Id.* The interest of the court in imposing punitive sanctions under Rule 11 does not disappear if the court lacks subject matter jurisdiction, because the court retains an interest in parties' obedience to its authority. *Id.*

Both aspects of the reasoning of *Willy* apply to Straub's conviction for criminal contempt. First, as with Rule 11 sanctions, the adjudication of a charge of criminal contempt does not require an assessment of the legal merits of the underlying controversy, so the court that hears the criminal contempt charge does not adjudicate a controversy over which it lacks jurisdiction. Whereas "[p]roceedings for civil contempt are between the original parties, and are instituted and tried as a part of the main cause[,] . . . proceedings at law for criminal contempt are between the public and the defendant, and are not a part of the original cause." *Gompers*, 221 U.S. at 444-45, 31 S. Ct. at 499. Second, like Rule 11

sanctions, a sanction for criminal contempt is punitive and aims to vindicate the authority of the court. *Id.* at 441, 31 S. Ct. at 498. Rule 11 sanctions and criminal contempt both differ from civil contempt, which is remedial and aims to force compliance with an order of the court. *Id.*

Although we have stated in dicta that "if the issuing court lacks subject-matter jurisdiction over the underlying controversy or personal jurisdiction over the parties to it, its order may be violated with impunity," *In re Novak,* 932 F.2d 1397, 1401 (11th Cir. 1991) (citing *In re Green,* 369 U.S. 689, 82 S. Ct. 1114 (1962); *Ex parte Fisk,* 113 U.S. 713, 718, 5 S. Ct. 724, 726 (1885); *United States v. Dickinson,* 465 F.2d 496, 511 (5th Cir. 1972)), that language should be construed narrowly. We relied upon two decisions of the Supreme Court in which the court that issued the order either lacked or might have lacked jurisdiction to issue the order itself, and each of these decisions is distinguishable.

The first decision we cited in our dicta in *Novak* was *Fisk,* in which the court that issued the order had subject matter jurisdiction over the underlying controversy but lacked jurisdiction to issue the order. *Fisk,* 113 U.S. at 726, 5 S. Ct. at 730. In *Fisk,* a federal court had ordered the defendant in a civil suit to submit to a deposition, but the Supreme Court determined that a federal statute prohibited the court from ordering the deposition. 113 U.S. 713, 5 S. Ct. 724. The district court in Straub's case, in contrast, lacked jurisdiction over the underlying controversy

but issued an order that was otherwise within the authority of the court.

The second decision we cited in *Novak* was *Green,* in which the court that issued the order might have lacked jurisdiction to issue the order as a result of federal preemption. In *Green,* a state court had issued a restraining order that prohibited a union from picketing. 369 U.S. at 690, 82 S. Ct. at 1115. The Supreme Court held that the state court violated the defendant's due process rights when it held him in contempt without providing him with a hearing to establish whether the restraining order was preempted by federal law. *Id.* at 692-93, 82 S. Ct. at 1116-17. The Court explained that the contempt conviction could not stand if the restraining order was preempted by federal law. *Id.* at 692, 82 S. Ct. at 1117. *Green,* like *Fisk,* did not involve a situation analogous to Straub's case, in which the court lacked subject matter jurisdiction over the underlying controversy but issued an order that was otherwise within its authority. The dicta in *Dickinson,* which was a decision of our predecessor court that we also cited in *Novak,* relied largely on *Green. Dickinson,* 465 F.2d at 511 & n.16.

The decision of the Supreme Court in *Willy* resolves this issue. We conclude that the district court had subject matter jurisdiction to resolve the charge of criminal contempt against Straub. Our dicta in *Novak* is inapposite.

*B. Straub's Arguments That the Evidence Was Insufficient Fail.*

To convict Straub of criminal contempt, the government had to establish that the court entered a lawful order of reasonable specificity that Straub willfully violated, *Bernardine,* 237 F.3d at 1282 (quoting *United States v. Maynard,* 933 F.2d 918, 920 (11th Cir. 1991) (per curiam)). Straub makes three arguments that the evidence against him was insufficient. First, Straub argues that the order was not lawful because it fell within two exceptions to the collateral bar rule, which prevents defendants in criminal contempt proceedings from raising the invalidity of the order as a defense. Second, Straub argues that the order was not reasonably specific because the terms "removal" and "premises" were ambiguous. Third, Straub argues that his violation of the order was not willful. Each of these arguments fails.

1. Straub's Arguments About the Lawfulness of the Order and the Collateral Bar Rule Fail.

Straub argues that the order that he was charged with violating fell within two exceptions to the collateral bar rule and, as a result, was not "lawful." Ordinarily, the collateral bar rule operates to prevent defendants in criminal contempt proceedings from raising the invalidity of the order as a defense. *Novak,* 932 F.2d at 1400-01; *Dickinson,* 465 F.2d at 509-10. A defendant may appeal the order but may not

disobey the order and challenge it collaterally in a criminal contempt proceeding unless certain exceptions are met. *Novak,* 932 F.2d at 1401-03; *Dickinson,* 465 F.2d at 511-12. Straub argues that "adequate and effective remedies [did not] exist for orderly review of the challenged ruling," *Novak,* 932 F.2d at 1401; *accord Dickinson,* 465 F.2d at 511, and that the order "require[d] an irretrievable surrender of constitutional guarantees," *Novak,* 932 F.2d at 1401; *Dickinson,* 465 F.2d at 511.

The government argues that our review of this issue is for plain error, but Straub argues that he preserved this issue in his motion for a judgment of acquittal under Rule 29 when he argued that the government must prove that the court entered a lawful order of reasonable specificity. According to Straub, his motion preserved his argument about the collateral bar rule because an order that falls within an exception to the collateral bar rule is not a "lawful order" as required by section 401(3). To preserve an issue for appeal, "one must raise an objection that is sufficient to apprise the trial court and the opposing party of the particular grounds upon which appellate relief will later be sought." *United States v. Dennis,* 786 F.2d 1029, 1042 (11th Cir. 1986). The objection must be raised "in such clear and simple language that the trial court may not misunderstand it." *United States v. Massey,* 443 F.3d 814, 819 (11th Cir. 2006) (quoting *United States v. Riggs,* 967 F.2d 561, 565 (11th Cir. 1992)) (internal quotation mark omitted).

Straub's objection was insufficient to apprise the court of the grounds for appeal. Straub did not raise it in such clear and simple language that the trial court could not misunderstand. After objecting that the order had not been a lawful order of reasonable specificity, Straub's counsel explained only why he believed that the order was not reasonably specific. Straub's counsel failed to suggest that he intended to raise an objection based on the collateral bar rule or on the ground that the order was not lawful. Because Straub did not preserve this argument for appeal, we review for plain error. *See Brough,* 297 F.3d at 1180.

Straub argues that because the hull was removed only three days after the order of April 15 was entered, "adequate and effective remedies [did not] exist for orderly review of the challenged ruling." *Novak,* 932 F.2d at 1401; *accord Dickinson,* 465 F.2d at 511. In *Walker v. City of Birmingham,* the Supreme Court rejected the argument that adequate remedies did not exist when two days separated the issuance of an ex parte injunction and the march that it enjoined. 388 U.S. 307, 318-19, 87 S. Ct. 1824, 1831 (1967). In the light of *Walker,* the district court did not commit plain error.

Straub also argues that because the order required him to surrender temporarily his property rights in the Broward Yachts facility and the Travelift, the order "require[d] an irretrievable surrender of constitutional guarantees." *Novak,* 932 F.2d at 1401; *Dickinson,* 465 F.2d at 511. We have suggested that to fall within this exception the order must cause

irreparable harm by irrevocably depriving the contemnor of a constitutional right. *See Dickinson,* 465 F.2d at 512-13. Straub cites no authority for the proposition that requiring his temporary absence from the property was an irrevocable deprivation. Again, the district court did not commit plain error.

2. The Order Was Reasonably Specific.

Straub next argues that the order that he was charged with violating was not reasonably specific. Determining whether an order is reasonably specific involves a factual inquiry that must consider the context in which the order was entered and the audience to which the order was addressed. *Bernardine,* 237 F.3d at 1282 (quoting *In re McDonald,* 819 F.2d 1020, 1024 (11th Cir. 1987) (per curiam)). "An order meets the 'reasonable specificity' requirement only if it is a 'clear, definite, and unambiguous' order requiring the action in question." *In re E.I. DuPont De Nemours & Co.-Benlate Litig.,* 99 F.3d 363, 370 (11th Cir. 1996) (quoting *United States v. Koblitz,* 803 F.2d 1523, 1527 (11th Cir. 1986)). Straub argues that the order was not reasonably specific because the term "removal" could have meant "moved from the shed to the water" instead of "fully launched and towed away."

Straub's argument fails. The order of April 15 provided instructions for "moving Hull No. 4 from Broward's shed into the water" and for "removal of the hull, engines, and any of [Seagrove's] other property

still located on Broward's premises." The purpose of the order would have been undermined if it had prohibited Straub's interference with the transfer of the hull to the water but not the towing of the hull. The evidence, viewed in the light most favorable to the government, was sufficient to support the conclusion that the order was reasonably specific about the meaning of the term "removal."

Straub also argues that the term "premises" was not reasonably specific because it left unclear whether the water and boat slip were included within the meaning of "premises." Because Straub did not raise this issue during the contempt proceeding, we review for plain error. *See Brough,* 297 F.3d at 1180. Although the order of April 15 referred initially to the "premises" as "including the launching facilities" but later listed the "premises" and the "launching facilities" separately, the purpose of the order would have been undermined if it had not prohibited Straub's presence at the launching facility. It was not plain error for the district court to conclude that the evidence, viewed in the light most favorable to the government, was sufficient to determine that the order was reasonably specific about the term "premises."

3. The Violation Was Willful.

Straub argues that he did not willfully violate the order because the order was ambiguous. Willfulness "means a deliberate or intended violation, as

distinguished from an accidental, inadvertent, or negligent violation of an order." *United States v. Baldwin,* 770 F.2d 1550, 1558 (11th Cir. 1985) (quoting *Falstaff Brewing Corp. v. Miller Brewing Co.,* 702 F.2d 770, 782 (9th Cir.1983)) (internal quotation marks omitted). Straub's argument fails.

When we view the evidence in the light most favorable to the government, we conclude that Straub's behavior was not the product of reasonable confusion or misunderstanding. While Straub stood at the launching facility, Retto warned Straub several times that he would be arrested if he did not leave the premises, and Retto read to Straub the relevant portion of the order of April 15. Straub even went inside the Broward Yachts building to leave his personal effects after Retto informed him that if he was arrested he could not bring personal property with him. After Straub returned, Retto advised Straub that he could wait in the parking lot, but Straub still refused to leave. This evidence was more than sufficient to support a finding that Straub violated the order willfully.

## IV. CONCLUSION

Straub's criminal contempt conviction is

**AFFIRMED.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 03-60237-CR-COHN/SNOW

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs. (Filed Jul. 24, 2006)

GLENN F. STRAUB,

Defendant-Appellant.
_____/

**ORDER AFFIRMING UNITED STATES MAGISTRATE JUDGE'S ORDER FINDING THE DEFENDANT IN CRIMINAL CONTEMPT**

**THIS CAUSE** is before the Court, pursuant to 18 U.S.C. § 3402 and *Midway Mfg. Co. v. Kruckenberg*, 720 F.2d 653, 654 (11th Cir. 1983), upon Defendant-Appellant's Appeal from United States Magistrate Judge Lurana S. Snow's June 22, 2004 Order finding Defendant Appellant, Glenn F. Straub, guilty of criminal contempt under 18 U.S.C. § 401(3) [DEs 27, 46 & 47]. The Court has carefully considered the Appellant's Initial Brief [DE 50] and accompanying Appendix [DE 51], the Appellee's Response [DE 52], the Appellant's Reply Brief [DE 53] and the underlying record, and is otherwise fully advised in the premises.

## I. BACKGROUND

The above-captioned case was opened on October 7, 2003 pursuant to Judge Patricia A. Seitz's Order Directing the Clerk of Court to Open a New Criminal Matter for the Criminal Contempt Proceedings Against Glenn F. Straub issued in a related civil case in this District, *Broward Yachts, Inc. v. The Vessel know as Destiny Hull No. 104*, Case No. 03-60304-CV-SEITZ. A brief review of the background of the related case aids in the evaluation of the instant Appeal.

On March 5, 2003, Broward Yachts, Inc. ("Broward Yachts") filed a civil complaint *in rem* against a vessel identified as Destiny Hull No. 104 alleging that it was owed monies for dockage, storage and haul-out services. (Mot. [DE 50], App. 1, Compl.) Defendant-Appellant Glenn F. Straub ("Straub") is the President of Broward Yachts. (*Id.*, p. 4.) The vessel was arrested pursuant to a warrant issued by Judge Seitz, and was released shortly thereafter upon a joint agreed motion by Broward Yachts and the owner of Hull No. 104, Seagrove Trading, Inc. ("Seagrove"). (DEs 9, 13 in No. 03-60304-CIV-SEITZ.)

The parties had trouble agreeing on how to effectuate the transfer of the vessel to Seagrove. After a series of hearings and telephone conferences, Judge Seitz issued a series of orders clarifying the obligations of the parties during the removal process. (Tr.

[DE 39], p. 11; Mot., App. 3.)[1] Specifically, on April 10, 2003, Judge Seitz ordered the United States Marshal to "use all force necessary to ensure that the Destiny Hull No. 4 [sic] and her Equipment . . . are removed from the premises of Broward Yachts." (Mot., App. 2.) Judge Seitz further ordered that "Mr. Glen Straub shall not interfere in any manner with the removal of the vessel, including he shall not be present on the premises during the removal." (*Id.*) The transfer did not occur as planned after the issuance of the April 10 Order. Thereafter, on April 15, 2003, Judge Seitz:

> ORDERED that Broward shall make the Travelift available to Seagrove's Contractors, at such time as they can again be mobilized, for use in moving Hull No. 4 [sic] from Broward's shed into the water. Seagrove may also use cranes, trucks or other equipment necessary to assist in the removal of the hull, engines, and any of its other property still located on Broward's premises, and Broward shall provide Seagrove's Contractors full access to its premises, including the launching facilities, for such purposes. Upon placement of Hull No. 4 [sic] in the water, Seagrove will be responsible for towing Hull No. 4 [sic] to another location of its choosing. . . .
>
> FURTHER ORDERED that Mr. Glenn Straub shall not interfere in any manner

---

[1] DE 39 is a copy of the transcript of the contempt proceedings before United States Magistrate Judge Lurana S. Snow on June 2, 2004.

> with the removal of Hull No. 4 [sic] and Seagrove's other property, and shall not be present on Broward's premises during the removal.

(Mot., App. 3.) The next day, Judge Seitz issued an order stating that Broward Yachts and Mega Marine Yacht Service, Inc. ("Mega Marine"), a yacht repair business who leased space at Broward Yachts and owned the boat lift, were ordered to keep the equipment used to lift the vessel, the Travelift, in good working order and make it available on 24-hours notice to move the vessel "from Broward's shed into the water." (Mot., App. 4.) The order further noted that failure to comply with the Order would result in Glenn Straub being held in contempt of court. (*Id.*)

At approximately 7:30 a.m. on April 18, 2003, Deputy United States Marshall Jerome Retto ("Retto") arrived at Broward Yachts with three other deputy marshals to effectuate the removal of Hull No. 104 from Broward Yachts' facilities. (Tr. [DE 37], pp. 18-20; 23-24.) Because of some Travelift malfunctions, it took approximately one and one-half hours to get the vessel into the water. (*Id.*, p. 24, 51, 87.) Once the vessel was in the water, the workers secured it to ensure that the boat would not hit the sides or front of the slip used to move the vessel. (*Id.*, p. 24.) The workers also placed the engines, which had been previously removed, back on the vessel. (*Id.*, p. 44.) After the workers secured the vessel on the slip in the water, the boat remained there while the workers waited for the arrival of the tow boats that were to

move Hull No. 104 from the Broward Yachts' slip to another location. (*Id.*, p. 47.)

At approximately 1:00 p.m., while the vessel remained in the water secured to the slip, Straub arrived at the Broward Yachts' facility. (*Id.*, p. 54-55.) Straub had received a call from the owner of Mega Marine stating that the failure to move Hull No. 104 in a timely manner was preventing him from doing other work at the Broward Yachts' facility that required the use of the Travelift. (*Id.* at 119.) Upon his arrival, Straub parked his car next to Hull No. 104. (*Id.*, p. 55-56.) After determining that Retto was in charge of the removal, Straub explained to Retto that the delay in removing the vessel was causing him to lose money. (*Id.*, p. 26-27, 55.) Retto read Straub the portions of Judge Seitz's April 15 and 16, 2006 Orders that specified that Straub was not to be present at Broward Yachts during the removal. (*Id.*, p. 28.) After reading the Orders, Retto told Straub that if he did not leave the property he would be held in contempt of court. (*Id.*, p. 28.) Straub responded that he was not going to leave. (*Id.*, p. 29.)

Thereafter, upon Retto's suggestion, Straub went into the Broward Yachts facility to leave his personal effects with someone in the building. (*Id.*, 30, 63.) He returned and stood near the vessel. (*Id.*, p. 31.) After complaining of excessive sun exposure and refusing a second suggestion by Retto to leave, Straub moved to an area under the Travelift. (*Id.*, p. 30.) Straub said he could not leave the area completely because he was under arrest. (*Id.*) Retto then gave Straub a third

and final opportunity to leave the area until the removal of the vessel was completed, informing Straub that he was not yet under arest [sic]. (*Id.*, p. 31.) Straub refused and approximately 20 minutes after Straub initially arrived on the premises, Retto placed him under arrest. (*Id.*, pp. 31, 55-56.)

Following the arrest, the above-captioned criminal case was opened by Order of Judge Seitz and a bench trial was held on June 3, 2004 before United States Magistrate Judge Lurana S. Snow regarding the criminal contempt charge. At the close of the Government's case, Straub moved for a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29. (*Id.*, p. 88.) Judge Snow deferred ruling on the Motion (*Id.*, p. 110) and later issued Findings of Fact and Conclusions of Law which stated that the Government had met its burden of proving indirect criminal contempt pursuant to 18 U.S.C. § 401(3). (Mot., App. 5, pp. 10-13.) Judge Snow determined that Judge Seitz's Orders were reasonably specific in their prohibition and that Straub's presence at Broward Yachts while the workers were waiting for the arrival of the tow boats was a willful violation of the Orders. (*Id.*) Straub now appeals the findings of Judge Snow.

## II. STANDARD OF REVIEW

In reviewing a finding of criminal contempt under 18 U.S.C. § 401(3), the reviewing court must "determine whether the evidence, when construed in

the light most favorable to the government, would permit a jury to find the defendant guilty beyond a reasonable doubt." *United States v. Bemardine* [sic], 237 F.3d 1279, 1281-82 (11th Cir. 2001).

## III. DISCUSSION

### A. Issues Preserved for Appeal

The first issue is whether Straub properly preserved the issues currently before this Court for appeal. To preserve an issue for appeal, "one must raise an objection that is sufficient to apprise the trial court and the opposing party of the particular grounds upon which appellate relief will later be sought. A general objection or an objection on other grounds will not suffice." *United States v. Dennis*, 786 F.2d 1029, 1042 (11th Cir. 1986) (citations omitted). The objection must be raised "'in such clear and simple language that the trial court may not misunderstand it.'" *United States v. Massey*, 443 F.3d 814, 819 (11th Cir. 2006) (quoting *United States v. Riggs*, 967 F.2d 561, 565 (11th Cir. 1992)). When the objection does not clearly inform the court of the legal basis for the objection, the Eleventh Circuit has held that the issue has not been properly preserved. *Id.*

To support a [sic] 18 U.S.C. § 401(3) conviction, the Government must establish: "(1) that the court entered a lawful order of reasonable specificity; (2) the order was violated; and (3) the violation was willful.'" *Bernadine*, 237 F.3d at 1282 (quoting *United States v. Maynard*, 933 F.2d 918, 920 (11th Cir.

1991)). Straub raises several bases for his appeal including: (1) that the Government failed to establish that the Orders of Judge Seitz were lawful and the ability to challenge the lawfulness falls within the collateral bar rule; (2) that the Orders were not reasonably specific as to the definition of "removal"; (3) that the Government failed to present evidence describing the boundaries of Broward Yachts' premises; and (4) that Straub did not willfully violate the Orders.

The Government first contends that Straub did not raise the issues regarding the lawfulness of the Orders and the collateral bar rule below, and therefore, these issues were not properly preserved for appeal. Straub states that although the majority of his argument in support of his Rule 29 Motion focused on the specificity of the Orders, the issue regarding lawfulness was properly raised because Straub's counsel argued that the Government had failed to establish a *prima facie* case and proceeded to list the elements required to support a § 401(3) conviction. (Reply [DE 53], p. 2-3 (citing Tr., p. 89).)

The Court agrees that Straub failed to preserve his arguments regarding the lawfulness of the Orders and the applicability of the collateral bar rule for appeal. Merely reciting the elements required to establish a *prima facie* case did not sufficiently apprise Judge Snow and the Government that this would be a basis for appeal. Other than listing lawfulness as an element of contempt, Straub's counsel did not address this issue during the bench trial.

Therefore, this issue was not properly preserved for appeal and the Court will not address the argument on its merits.

The Government also argues that Straub did not challenge the sufficiency of the Governments proof defining the "premises" of Broward Yachts during trial. Straub states that he raised this issue when addressing whether the Orders were reasonably specific. A review of the record below reveals that at no time during the trial before Judge Snow did Straub contest the sufficiency of the Government's proof defining Broward Yachts' "premises." Neither Judge Snow nor the Government were put on notice of this position. Straub also did not contest whether the Orders were reasonably specific as to the term "premises." A review of Judge Snow's Order and the trial transcript reflects that Judge Snow only believed that Straub contested the ambiguity of the term "removal." (Mot., App. 5, p. 10.) The Court finds that Straub did not preserve the issue of whether the Government offered sufficient evidence regarding the definition of the term "premises" for appeal. The remaining issues were properly preserved for appeal and will be addressed below.

**B. Reasonable Specificity of the Orders**

Straub argues that Judge Seitz's April 15 and 16 Orders were not reasonably specific because the definition of the term "removal" was not defined in either Order. Straub argues that once the vessel was

placed in the water, it was reasonable for him to conclude that the vessel had been "removed." The Government alleges that the vessel was clearly not removed because it was still attached to the lifting equipment when Straub arrived at Broward Yachts.

To determine whether an Order at issue in a criminal contempt proceeding meets the reasonable specificity requirement, the reviewing court must conduct a "factual inquiry . . . 'in the context in which [the order] is entered and the audience to which it is addressed.'" *Bernadine*, 237 F.3d at 1282 (quoting *In re McDonald*, 819 F.2d 1020, 1024 (11th Cir. 1987)). An order is reasonably specific "only if it is 'clear, definite and unambiguous' in requiring the action in question." *Id.* (quoting *Bush Ranch, Inc. v. E.I. Du-Pont De Nemours & Co.*, 99 F.3d 363, 370 (11th Cir. 1996)). Any ambiguities in the order must be resolved in favor of the accused. *United States v. O'Quinn*, 913 F.2d 221, 222 (5th Cir. 1990) (citing *NBA Properties v. Gold*, 895 F.2d 30, 32 (1st Cir. 1990)).

In this case, in consideration of the audience to which the Orders were addressed and the context in which they were issued, the Court finds that Judge's Seitz's Orders were reasonably specific. Judge Seitz's Orders stated that "Glenn. Straub shall not interfere in any manner with the removal of Hull No. 4 [sic] and Seagrove's other property, and shall not be present on Broward's premises during the removal." (Mot., App. 3-4.) Straub alleges that the Orders did not sufficiently define the term "removal." The Government contends that it is clear that the boat had

not been "removed" from the property because it was still tied to the Travelift, a piece of equipment located on Broward Yachts' premises, when Straub arrived.

The testimony before Judge Snow clearly established that upon Straub's arrival, the vessel was still attached to the Travelift and had not been removed by the tow boats. The parties involved in this litigation had thoroughly addressed the issue of removal before the actual day of removal. Judge Seitz's April 15, 2006 Order detailed the removal process. The Order concluded that the most efficient means of "moving Hull No. 4 [sic] from the shed and launching it [was] by using the Travelift." (Mot., App. 3, ¶ 5.) It specifically stated that "[u]pon placement of [the vessel] in the water, Seagrove would be responsible for towing [it] to another location." (*Id.*, p. 3.) Further, the April 15 Order noted that the United States Marshal was instructed to prevent the interference of any person while Seagrove's Contractors were mobilized. (*Id.*, p. 4.) Seagrove's Contractors are clearly defined in the Order as "the Travelift operator and crew that Seagrove will hire to move Hull No. 4." (*Id.*, ¶ 6.) Therefore, Seagrove's Contractors included the tow boat operators that were hired by Seagrove to move the vessel from the Travelift to another location.

The parties knew or should have known that removal could not be completed until the tow boats arrived and Hull No. 104 could be untied from the Travelift and taken to another location. Straub's reason for arriving at Broward Yachts was to talk to the Marshals about the extended period of time it was

taking to remove the boat. He knew that removal had not been completed. Based on the foregoing, the Court finds that in the context in which these Orders were issued and based on the audience to which they were addressed, Judge Snow correctly concluded that the Orders were reasonably specific and that 'removal" was not completed until the vessel "was fully launched and towed away." (Mot., App. 5, p. 12.)

**C. Willful Violation**

Straub also alleges that Judge Snow's findings were erroneous because the evidence presented at trial failed to establish that Straub willfully violated the Orders. Straub contends that he did not have sufficient notice that he was violating the Orders because the boat was already in the water when he arrived and the fact that he was given an opportunity to leave does not change the ambiguity of the Orders. "'Willfulness' is defined as 'a deliberate or intended violation, as distinguished from an accidental, inadvertent, or negligent violation of an order.'" *United States v. Maynard*, 933 F.2d 918, 920 (11th Cir. 1991) (quoting *Untied States v. Robinson*, 922 F.2d 1531, 1535 (11th Cir. 1991)).

In this case, Straub was fully aware that he was violating the Orders by remaining at the Broward Yacht facility. As stated above, the Court finds that the Orders were reasonably specific under the circumstances. Retto repeatedly told Straub that he was violating the Orders and that he was not authorized

to be on the premises. Regardless, Straub remained on the premises and even put his personal effects inside Broward Yachts' facility in anticipation of his arrest. It is abundantly clear from the facts in this case that Straub deliberately and intentionally remained on the premises prior to the removal of Hull No. 104 even after repeatedly being told to leave. Therefore, the Court finds that Judge Snow correctly concluded that Straub willfully violated Judge Seitz's Orders.

## IV. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that the June 22, 2004 Findings of Fact and Conclusions of Law of United States Magistrate Judge Lurana S. Snow finding Glenn F. Straub guilty of criminal contempt under 18 U.S.C. § 401(3) [DE 13] is hereby **AFFIRMED**.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, on this 24th day of July, 2006.

/s/ James I. Cohn
JAMES I. COHN
UNITED STATES
DISTRICT JUDGE

Copies provided:
Bertha R. Mitrani, AUSA
Jay A. Gayoso, Esq.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

---

No. 06-14354-FF

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GLENN F. STRAUB,

Defendant-Appellant.

---

On Appeal from the United States District Court
for the Southern District of Florida

---

(Filed Jan. 3, 2008)

BEFORE: ANDERSON and PRYOR, Circuit Judges, and VINING,* District Judge.

PER CURIAM:

The petition(s) for rehearing filed by Appellant Glenn F. Straub is DENIED.

---

* Honorable Robert L. Vining, Jr., United States District Judge for the Northern District of Georgia, sitting by designation.

ENTERED FOR THE COURT:

/s/ [Illegible]
UNITED STATES CIRCUIT JUDGE

104

FILED
JUL 30 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 07-1254

# In the Supreme Court of the United States

GLENN F. STRAUB, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

GREGORY G. GARRE
*Acting Solicitor General*
*Counsel of Record*
MATTHEW W. FRIEDRICH
*Acting Assistant Attorney General*
JOSEPH F. PALMER
*Attorney*
*Department of Justice*
*Washington, D.C. 20530-0001*
*(202) 514-2217*

## QUESTION PRESENTED

Whether a district court has authority to punish as criminal contempt the willful violation of an order that the court entered before determining that it lacked jurisdiction in the underlying action.

## TABLE OF CONTENTS


Page

Opinions below ..... 1
Jurisdiction ..... 1
Statement ..... 1
Argument ..... 6
Conclusion ..... 11


## TABLE OF AUTHORITIES

Cases:


*Broward Yachts* v. *Vessel Known as Destiny Hull*, 107 Fed. Appx. 183 (11th Cir. 2004) ..... 2

*Ex parte Fisk*, 113 U.S. 713 (1885) ..... 5, 10, 11

*Gompers* v. *Buck's Stove & Range Co.*, 221 U.S. 418 (1911) ..... 7

*Green, In re*, 369 U.S. 689 (1962) ..... 5, 10, 11

*R.M.S. Titanic, Inc.* v. *Haver*, 171 F.3d 943 (4th Cir.), cert. denied, 528 U.S. 825 (1999) ..... 10

*Szabo Food Serv., Inc.* v. *Canteen Corp.*, 823 F.2d 1073 (7th Cir. 1987), cert. dismissed, 485 U.S. 901 (1988) ..... 9

*Willy* v. *Coastal Corp.*, 503 U.S. 131 (1992) ..... 4, 6, 7, 9

*United States* v. *United Mine Workers*, 330 U.S. 258 (1947) ..... 6, 8, 11

*United States* v. *Shipp*, 203 U.S. 563 (1906) ..... 6

*Ventura Packers, Inc.* v. *F/V Jeanine Kathleen*, 424 F.3d 852 (9th Cir. 2005) ..... 10

Constitution, statute and rule: Page

U.S. Const. Amend. V (Due Process Clause) ..... 10
18 U.S.C. 401(3) ..... 1, 4
Fed. R. Civ. P. 11 ..... 5, 6, 7, 8

# In the Supreme Court of the United States

No. 07-1254

GLENN F. STRAUB, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-16) is reported at 508 F.3d 1003. The opinion of the district court (Pet. App. 17-29) is unreported.

### JURISDICTION

The judgment of the court of appeals was entered on November 29, 2007. A petition for rehearing was denied on January 3, 2008 (Pet. App. 30-31). The petition for a writ of certiorari was filed on April 1, 2008. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

Following a bench trial in the United States District Court for the Southern District of Florida, petitioner was convicted of criminal contempt in violation of 18 U.S.C. 401(3). He was sentenced to 40 hours of com-

munity service. The court of appeals affirmed. Pet. App. 1-16.

1. Petitioner was president of Broward Yachts, Inc. (Broward). Broward provided storage services for the hull of a partially completed yacht owned by Seagrove Trading, Inc. To recover unpaid fees, Broward filed an in rem suit against the hull. In 2003, the district court dismissed the suit for lack of subject matter jurisdiction, on the ground that the hull was not a "vessel" for purposes of maritime jurisdiction. The court of appeals affirmed that dismissal. Pet. App. 2-3; see *Broward Yachts* v. *Vessel Known as Destiny Hull*, 107 Fed. Appx. 183 (11th Cir. 2004) (Table).

In March 2003, while the in rem suit was still pending, the district court issued an arrest warrant for the hull and ordered Broward to release it in exchange for a bond posted by Seagrove. The parties could not agree on the logistical details of removing the hull from Broward's premises, which required the use of a boat-moving vehicle called a Travelift. Following hearings, telephone conferences, and a series of orders clarifying the parties' respective obligations during the transfer, the court issued a detailed order governing the procedures for transferring the hull that specifically prohibited petitioner from being on the premises during the removal:

> ORDERED that Broward shall make the Travelift available to Seagrove's Contractors * * * for use in moving [the hull] from Broward's shed into the water. Seagrove may also use cranes, trucks or other equipment necessary to assist in the removal of the hull, engines, and any of its other property still located on Broward's premises, and Broward shall provide Seagrove's Contractors full access to its premises, including the launching facilities, for such pur-

> poses. Upon placement of [the hull] in the water, Seagrove will be responsible for towing [it] to another location of its choosing. Seagrove will provide Mega Marine [Yacht Service, Inc.] and Broward twenty four hours' written notice of its intent to use the Travelift.
>
> IT IS FURTHER ORDERED that the United States Marshal is hereby directed to use such force as may be necessary to ensure that Seagrove's Contractors have the unobstructed use of the Travelift and have unobstructed access to Broward's premises and the launching facilities as ordered herein until [the hull], the engines, and Seagrove's other property are removed from Broward's premises, and to prevent any party, third party, or other person or entity from interfering with, or otherwise obstructing or preventing the move from taking place when Seagrove's Contractors are mobilized.
>
> . . . .
>
> IT IS FURTHER ORDERED that [petitioner] Mr. Glenn Straub shall not interfere in any manner with the removal of [the hull] and Seagrove's other property, and shall not be present on Broward's premises during the removal.

Pet. App. 3-4; see *id.* at 19-20.

The following day, the district court issued another order clarifying that Broward and Mega Marine—a yacht repair company that owned the Travelift—were required to make the Travelift available on 24 hours' notice and that failure to comply would result in petitioner being held in contempt of court. Pet. App. 20.

On April 18, 2003, workers removed the hull. Four Deputy United States Marshals supervised the removal. Workers moved the hull into the water, tied it to a slip, and then waited for tow boats to take the hull away. During the delay, petitioner arrived at the facility and complained to one of the Deputies that the delay was causing him to lose money. The Deputy read to petitioner the portions of the order that prohibited him from being on the premises during the removal. The Deputy told petitioner that he would be held in contempt if he did not leave the premises and that he could not take his personal belongings with him if he were arrested. Petitioner responded that he was not going to leave, and, at the suggestion of the Deputy, petitioner went inside the Broward building to leave his personal effects. When petitioner came outside, the Deputy again asked him to leave, but petitioner refused, claiming that he was already under arrest. The Deputy clarified that petitioner was not yet under arrest and that he could avoid arrest if he waited in the parking lot. Petitioner again refused to leave, and the Deputy arrested him. Pet. App. 4-5, 20-22.

2. Following a bench trial before a magistrate judge, petitioner was convicted of criminal contempt, in violation of 18 U.S.C. 401(3). The district court affirmed petitioner's conviction. Pet. App. 17-29.

3. The court of appeals also affirmed. Pet. App. 1-16. The court considered sua sponte whether the district court had authority to punish as criminal contempt the willful violation of an order entered in a suit that was ultimately dismissed for lack of jurisdiction. Relying on *Willy* v. *Coastal Corp.*, 503 U.S. 131 (1992), the court of appeals concluded that the district court did have that authority. In *Willy*, this Court held that a district court

has the authority to impose sanctions under Federal Rule of Civil Procedure 11 for conduct during a proceeding over which the court lacked subject matter jurisdiction. Pet. App. 7-8. The court of appeals concluded that *Willy*'s reasoning applied equally to criminal contempt. First, the court observed that, "as with Rule 11 sanctions, the adjudication of a charge of criminal contempt does not require an assessment of the legal merits of the underlying controversy, so the court that hears the criminal contempt charge does not adjudicate a controversy over which it lacks jurisdiction." *Id.* at 8. Second, the court noted that, again as with Rule 11 sanctions, "a sanction for criminal contempt is punitive and aims to vindicate the authority of the court." *Id.* at 8-9. The court of appeals contrasted a court's interest in criminal contempt—which serves the court's ongoing interest in "parties' obedience to its authority," *id.* at 8—with the purpose of civil contempt, which "is remedial and aims to force compliance with an order of the court," *id.* at 9, and thus "disappear[s] if the court lacks subject matter jurisdiction," *id.* at 8.

The court of appeals concluded that this Court's decisions in *Ex parte Fisk*, 113 U.S. 713 (1885), and *In re Green*, 369 U.S. 689 (1962), were inapposite. The court noted that in *Fisk*, there was no question as to subject matter jurisdiction over the underlying suit; rather, the sanctions in that case were invalid because a federal statute prohibited the district court from issuing the specific order whose violation led to the sanctions. Pet. App. 9. And the court explained that *Green* held that a state court had violated a defendant's due process rights by holding him in contempt of an order without holding a hearing to determine whether the order was preempted by federal law. *Id.* at 10. The court of appeals

concluded that neither case was analogous to petitioner's case, because here the district court issued an order that was otherwise valid except that the court later determined that it lacked jurisdiction over the underlying controversy. *Ibid.*

The court of appeals also rejected petitioner's challenges to the sufficiency of the evidence to support his conviction. Pet. App. 11-16.*

## ARGUMENT

Petitioner contends that the district court lacked authority to punish him for criminal contempt for his willful violation of a court order because it was ultimately determined that the court lacked jurisdiction over the suit in which it issued the order. The court of appeals' decision is correct, and further review is not warranted.

1. As petitioner acknowledges (Pet. 6-7), this Court has long maintained that a court may impose criminal contempt sanctions for violation of an order issued before it was determined that the court lacked jurisdiction over the case. See *United States* v. *United Mine Workers*, 330 U.S. 258, 290-293 (1947); see also *United States* v. *Shipp*, 203 U.S. 563, 573 (1906). This Court reaffirmed that principle in *Willy* v. *Coastal Corp.*, 503 U.S. 131 (1992). In *Willy*, the Court held that a district court has authority to impose Rule 11 sanctions for misconduct in a case where the appellate court later ruled that the district court lacked subject matter jurisdiction. See *id.* at 132. In so holding, the Court cited with approval its conclusion in *United Mine Workers* that a court could impose criminal contempt sanctions even if it lacked jurisdiction over the underlying action, reasoning that

* Petitioner does not renew those challenges in this Court.

the "same concern" expressed in *United Mine Workers* —"the maintenance of orderly procedure, even in the wake of a jurisdiction ruling later found to be mistaken" —justified upholding the Rule 11 sanctions. *Id.* at 137.

The Court in *Willy* set forth two rationales supporting a district court's authority to impose sanctions even when the court is later found to lack jurisdiction in the underlying action. First, the Court noted that Rule 11 sanctions are "collateral to the merits" and therefore do not "raise the issue of a district court adjudicating the merits of a 'case or controversy' over which it lacks jurisdiction." *Willy*, 503 U.S. at 137-138. Second, a court's purpose in imposing Rule 11 sanctions—to punish a party and promote respect for the court's authority—"does not disappear upon a subsequent determination that the court was without subject-matter jurisdiction." *Id.* at 139. That continuing purpose, the Court noted, stands in contrast with the interest underlying civil contempt—to force compliance with a court's decree—which dissipates if the court lacks jurisdiction. *Id.* at 138-139.

As the court of appeals observed (Pet. App. 7-9), because Rule 11 and criminal contempt sanctions share essentially the same purpose, the two *Willy* rationales apply with equal force to criminal contempt. First, a criminal contempt proceeding is collateral to and separate from the underlying suit. See *Gompers* v. *Buck's Stove & Range Co.*, 221 U.S. 418, 444-445 (1911) (civil contempt is "a part of the main cause" between "the original parties," while criminal contempt is between "the public and the defendant, and [is] not a part of the original cause"). Second, like Rule 11 sanctions, the purpose of criminal contempt is to punish the violator and to vindicate the court's authority. *Id.* at 441. Thus,

given the essential similarity between Rule 11 sanctions and criminal contempt, the court of appeals correctly held (Pet. App. 10) that this Court's decision in *Willy* controls the outcome in this case.

2. Petitioner seeks to avoid that conclusion by contending (Pet. 7-9) that a court may only punish violations of an order that was necessary to maintain the status quo while the court determined whether it had jurisdiction and that the order petitioner violated was not necessary in that sense. That contention is without merit.

a. Contrary to petitioner's suggestion, this Court's precedents do not limit the contempt authority of a court (in cases in which the court ultimately lacks jurisdiction) to violations of orders necessary to maintain the status quo. Although this Court in *United Mine Workers* and *Shipp* reasoned that the need to protect a court's authority to issue orders "preserv[ing] the existing conditions and the subject of the petition," see *United Mine Workers*, 330 U.S. at 292, was among the rationales underlying a court's criminal contempt power in that context, the Court in *United Mine Workers* suggested that, until a court definitively rules that it lacks jurisdiction, a willful violation of any of its orders may validly be punished through criminal contempt. See *id.* at 294-295 (The court's orders "outstanding or issued after [the court assumed jurisdiction] were to be obeyed until they expired or were set aside by appropriate proceedings, appellate or otherwise. Convictions for criminal contempt intervening before that time may stand.").

In addition, *Willy* did not limit a court's authority under Rule 11 to conduct that impeded the court's effort to preserve the status quo while it determined whether it had jurisdiction. Indeed, the Court expressly pointed out that "[n]one of the sanctionable conduct was related

to petitioner's initial effort to convince the District Court that it was without subject-matter jurisdiction." *Willy*, 503 U.S. at 133. *Willy* holds that a court's interest in maintaining orderly proceedings justifies punishment of misconduct that takes place during the case until the court, or a subsequent appellate court, determines that jurisdiction is absent, without regard to whether the misconduct is related to the court's determination of its jurisdiction. See *id.* at 139.

The same principle applies in the criminal contempt context. As the Court in *Willy* pointed out, courts sometimes mistakenly assume they have jurisdiction, and until the court (or an appellate court) concludes otherwise, there is no constitutional principle, or even sensible reason, that prevents the court in the interim from requiring compliance with its orders and punishing willful violations. See 503 U.S. at 139; see also *Szabo Food Serv., Inc.* v. *Canteen Corp.*, 823 F.2d 1073, 1078 (7th Cir. 1987) ("[A] court has jurisdiction to determine its jurisdiction and therefore may engage in all the usual judicial acts, even though it has no power to decide the case on the merits. It may supervise discovery, hold a trial, and order the payment of costs at the end."), cert. dismissed, 485 U.S. 901 (1988). Thus, while a court is considering its jurisdiction, or is under the mistaken understanding that it has jurisdiction, it has authority to issue orders necessary to proceed with the case, and it may punish those who willfully flout those orders, regardless of whether those orders are limited to preserving the status quo pending a determination of jurisdiction.

b. In any event, even if a court's authority is limited to maintaining the status quo pending determination of its jurisdiction, the order that petitioner violated was

related to the court's effort to do so. Broward brought the underlying suit as an in rem action. Pet. App. 2. In order to secure jurisdiction, the district court was required to issue a warrant and arrest the vessel. See *R.M.S. Titanic, Inc.* v. *Haver*, 171 F.3d 943, 964 (4th Cir.) ("Only if the court has exclusive custody and control over the property does it have jurisdiction over the property so as to be able to adjudicate rights in it that are binding."), cert. denied, 528 U.S. 825 (1999). The district court did so. Pet. App. 18. The parties then agreed, in a joint motion, that the vessel should be released from arrest in exchange for Seagrove's posting of a bond. *Id.* at 3, 18. In maritime cases, substituting a bond from the owner as the *res* and releasing the vessel to its owner is a well-established procedure that protects the court's ability to grant relief while giving the plaintiff security of known and fixed value and allowing the owner to make productive use of his ship while the action is pending. See, *e.g.*, *Ventura Packers, Inc.* v. *F/V Jeanine Kathleen*, 424 F.3d 852, 859 (9th Cir. 2005). Accordingly, the district court's orders effectuating the release of the vessel to Seagrove in exchange for the bond were part and parcel of maintaining the status quo.

3. Petitioner further contends (Pet. 11) that the court of appeals' decision in this case conflicts with this Court's decisions in *Ex parte Fisk*, 113 U.S. 713 (1885), and *In re Green*, 369 U.S. 689 (1962). That contention is without merit.

As the court of appeals noted (Pet. App. 9-10), *Fisk* and *Green* are distinguishable. In *Green*, a state court held Green in contempt for violating an ex parte injunction prohibiting a union from picketing. The Court held that it violated the Due Process Clause "to convict a person of a contempt of this nature without a hearing and

an opportunity to establish that the state court was acting in a field reserved exclusively by Congress for the federal agency." *Green*, 369 U.S. at 693. Here, there is no allegation that petitioner did not receive due process during his contempt proceedings.

In *Fisk*, the issue was not, as here, that the court lacked jurisdiction over the underlying case. Rather, this Court held that federal law precluded a federal court from issuing the order that the petitioner in that case was sanctioned for disobeying, namely an order to appear before a master for a deposition. *Fisk*, 113 U.S. at 724-726. See *United Mine Workers*, 330 U.S. at 291-292 (distinguishing *Fisk*). At bottom, petitioner bases his claim of a conflict on the assertion (Pet. 11) that, regardless of whether the district court had subject matter jurisdiction in the underlying action, the district court lacked authority to order the hull's release and to order petitioner not to interfere. But he offers no authority or argument in support of that contention, and that factbound contention does not warrant review in any event.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

GREGORY G. GARRE
*Acting Solicitor General*
MATTHEW W. FRIEDRICH
*Acting Assistant Attorney General*
JOSEPH F. PALMER
*Attorney*

JULY 2008

107

(3)

No. 07-1254

Supreme Court, U.S.
FILED
SEP 30 2008
OFFICE OF THE CLERK

# In The
# Supreme Court of the United States

GLENN F. STRAUB,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## REPLY BRIEF FOR PETITIONER

JAY A. GAYOSO
*Counsel of Record*
JAY A. GAYOSO, P.A.
Aventura Corporate Center
20801 Biscayne Boulevard,
Suite 506
Aventura, Florida 33180
(305) 936-8844

*Counsel for Glenn F. Straub*

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES ..... ii

REPLY BRIEF FOR THE PETITIONER ..... 1

CONCLUSION ..... 7

# TABLE OF AUTHORITIES

Page

CASES

*Allen v. Wright*, 468 U.S. 737 (1984) ..... 2

*Ex parte Fisk*, 113 U.S. 713 (1885) ..... 1, 2, 6

*In re Burrus*, 136 U.S. 586 (1890) ..... 2

*Ex parte Rowland*, 104 U.S. (14 Otto) 604 (1881) ..... 2

*In re Sawyer*, 124 U.S. 200 (1888) ..... 2

*Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994) ..... 4

*United States v. United Mine Workers of America*, 330 U.S. 258 (1947) ..... 1, 2, 3

*Willy v. Coastal Corp.*, 503 U.S. 131 (1992) ..... 1, 3, 4

STATUTES

U.S. Const. art. III, § 2, cl. 1 ..... 2

RULES

Rule 11, Fed.R.Civ.P. ..... 1, 3, 4

## REPLY BRIEF FOR THE PETITIONER

The Eleventh Circuit held in this case that a conviction for indirect criminal contempt survives a determination by a district court that it has no subject matter jurisdiction even if the contempt arises from an order that was not necessary to maintain the status quo while the court determined if it had jurisdiction. Respondent contends that certiorari is not warranted because criminal contempt convictions always survive a determination that a federal court does not have subject matter jurisdiction. However, each of its arguments against certiorari falls short. First, this Court in *United States v. United Mine Workers*, 330 U.S. 258, 293-95 (1947), did not rule that all criminal convictions must be upheld when someone fails to obey an order of a court that has no jurisdiction. Instead, this Court couched its ruling in an analysis of whether a district court's ruling was necessary to maintain the status quo while it was determining jurisdiction. Second, there is a distinction between allowing the imposition of Rule 11, Fed.R.Civ.P., sanctions to survive a determination that a federal court has no jurisdiction as decided in *Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992) and a determination of indirect criminal contempt. Finally, the Eleventh Circuit's determination in this case is in conflict with this Court's determination in *Ex parte Fisk*, 113 U.S. 713 (1885). Accordingly, certiorari should be granted.

1. Article III courts have jurisdiction only to hear "cases" and "controversies." U.S. Const. art. III, § 2, cl. 1; *Allen v. Wright*, 468 U.S. 737, 750 (1984). With few exceptions, exercises of judicial power by Article III courts must derive from this constitutional grant. Actions taken in excess of those powers are null and void because actions taken without such jurisdiction are an "usurp[ation of] judicial forms and facilities," *Mine Workers*, 330 U.S. at 309. It has been established law for over 125 years that a district court must have subject matter jurisdiction over the suit before it may issue a valid contempt order. *See, e.g., Ex parte Rowland*, 104 U.S. (14 Otto) 604, 612 (1881). When it acts in excess of its jurisdiction, the order punishing a person for contempt is void. *Id.* at 612, 617-18; *see also In re Burrus*, 136 U.S. 586, 597 (1890); *In re Sawyer*, 124 U.S. 200, 221-22 (1888); *Ex parte Fisk*, 113 U.S. 713, 726 (1885). Therefore, the rule is that a contempt order entered by a court without jurisdiction must be reversed. The exception to the rule, as annunciated in *Mine Workers*, is that a party can be held in contempt for violating an order necessary for maintaining the status quo while the district court determines whether it has jurisdiction. Respondent contends that the exception must now swallow the rule.

Respondent attempts to expand this Court's ruling in *Mine Workers*. In that case, this Court reasoned that a district court has the inherent authority to maintain the status quo while it takes the time necessary to determine if it has jurisdiction, and

it can hold a party in criminal contempt for violation of its lawful orders while determining whether it has jurisdiction. Respondent acknowledges that *Mine Workers* considered a criminal contempt conviction that was entered **while** the district court was determining that it lacked jurisdiction. Respondent, however, attempts to shoehorn this Court's ruling in *Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992), which considered Rule 11 sanctions, into the analysis of indirect criminal contempt rulings. Respondent concludes that all contempt violations must survive a later determination by a district court that it lacks subject matter jurisdiction. However, the rule adopted by the Eleventh Circuit in this case and espoused by Respondent is an improper expansion of this Court's analysis in *Mine Workers*.

*Willy* involved a party who repeatedly failed to follow court rulings regarding rules of procedure. *Willy*, 503 U.S. at 131. This Court reasoned, in relevant part, that Rule 11 sanctions survive a later determination that a court lacked jurisdiction because a Rule 11 determination does not go to the merits of the case. Respondent is silent on the issue of whether the order in question in this case went to the merits of the case. In fact, the district court's order in this case was effectively a ruling on the merits. The effect of the district court's orders was to give the Hull owners all the relief they could have asked for on the merits of the case, *i.e.*, possession of the Hull and the extinguishment of a possessory lien, while the court was still unsure of whether it had

jurisdiction. Therefore, this Court's analysis of Rule 11 in *Willy* is inapplicable to the question raised in this case, *i.e.*, whether a conviction for criminal contempt can stand where the order in question was not necessary to maintain the status quo.

The status quo at the time that the Hull in question was arrested was that the Hull had been languishing at the Broward Yachts facility and there was no simple method to remove it. The district court ultimately ordered that the Hull owners could take the equipment of Broward Yachts and ordered Straub to stay away from his business while the Hull was being removed.

Respondent effectively argues that any time a party violates a court order, a court has the right to vindicate its authority and punish the party regardless of whether it later determines that the court order that was violated was not within its jurisdiction. But Respondent falls significantly short of explaining why a civil contemnor who continues to disregard a court's authority should be treated differently from someone who is charged with indirect criminal contempt in circumstances in which the district court later determines that it lacks subject matter jurisdiction. This Court has noted that there is an elusive distinction between civil and criminal contempt. *Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 829-30 (1994). There is no sensible reason why indirect criminal contempt should be treated differently than civil contempt under the facts of this case.

The proper analysis does not turn on whether a party defied a court order, but instead is directed to whether the order itself was necessary to maintain the status quo while the court took the time to determine if it had jurisdiction. In this case, without doubt the district court order that Straub allegedly violated affected the merits of the case and went beyond merely maintaining the status quo. When, as in this case, it is determined that the lawsuit should not have been pending because the district court lacked subject matter jurisdiction, then an order falls if it is not narrowly tailored to maintain the status quo while the district court determines its jurisdiction. And, if the order exceeds the judge's authority, the contempt judgment for its disobedience must *a fortiori* be vacated.

2. Respondent asserts that the district court was maintaining the status quo when it entered the orders in question because the parties agreed to substitute a bond for the Hull. The district court certainly did not have authority, while it was determining its own jurisdiction, to enter orders that effectively closed down the Broward Yachts' business for half a day, kept Straub away from his business, and allowed the Hull owners to use Broward Yachts' property. There certainly is no precedent to allow such actions. The fact that the parties agreed to substitute a bond for the vessel is of no moment because the Hull owners simply were unable to remove the Hull for financial or other practical reasons without the district court taking the extraordinary

step of effectively allowing the Hull owners to take over Straub's business for more than half a day.

It is without question that the district court had no authority to assist in the removal of the Hull because it required the district court to take actions that were beyond determining whether it had jurisdiction over the matter. Stated a different way, the district court's authority transferred from the Hull to the bond while it decided whether it had jurisdiction over the case. Any further action with respect to the Hull that would involve more than maintaining the status quo would require the district court to have jurisdiction over the controversy.

3. Respondent's effort to distinguish *Ex parte Fisk*, 113 U.S. 713 is unavailing. In *Ex parte Fisk*, this Court held that, where an action had been commenced in the state court and removed to federal court, a prior order of the state court requiring an examination that was peculiar to state law could not be required in federal court and, therefore, was beyond the authority of the federal court. *Id.* at 726. *Ex parte Fiske* stands for the proposition that an order that is beyond the district court's authority cannot be the basis for a contempt conviction. Respondent glosses over this proposition by suggesting that the district court had authority to order the removal of the Hull and to order Straub not to appear indefinitely at his place of business while the Hull was being removed, but Respondent cannot cite to any authority allowing the district court to make such

orders when it is determining if it has jurisdiction. There simply is no such authority.

Accordingly, this Court should grant the Petition for Writ of Certiorari because the Eleventh Circuit's opinion conflicts with prior decisions by this Court in which it has ruled that a district court's order is invalid when it does not have jurisdiction and the order is not necessary to maintain the status quo while the district court contemplates whether it has jurisdiction.

## CONCLUSION

For these reasons and the reasons discussed in the petition, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted on behalf of Glenn F. Staub this 30th day of September 2008.

JAY A. GAYOSO, P.A.
Jay A. Gayoso